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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,162	10/16/2003	Robert D. Harty	0006/01146	6814
27197	7590	11/27/2007		
CHERSKOV & FLAYNIK THE CIVIC OPERA BUILDING 20 NORTH WACKER DRIVE, SUITE 1447 CHICAGO, IL 60606			EXAMINER PATEL, TAJASH D	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/687,162

Applicant(s)

HARTY, ROBERT D.

Examiner

Tejash D. Patel

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/30/07 (RCE).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7-16 and 18-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-5, 7-16 and 18-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The request for a RCE (Request for Continued Examination) filed on August 30, 2007 is acceptable and an action on the RCE follows:

#### ***Claim Rejections - 35 USC § 112.***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 7-8, 11-13 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 2, 7-8, 11-13 and 26, the term "the second substrate" lacks proper antecedent basis. Correction is required.

#### ***Claim Objections***

4. Claims 1, 13 and 26 objected to under as being in improper form. Claims 13 and 26 both are dependent on cancelled claim 3. For examining purpose claims 13 and 26 have been examined as being dependent on claim 1. In claim 1, on line 6, "form" should be changed to -- from --. Correction is required.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 7-12 14, 21, 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated as understood by Hartunian (US 6,058,517). Hartunian discloses a device to protect the neck and the base of the skull while allowing unimpeded motion of the head from either side to side or front to front adapted to be worn with a helmet that makes contact with the wearer at multiple and distinct location by distributing force of impact, figures 8, 10, 11 including a first free hanging impact resistant pliable substrate (18) that extends upward from approximately the first thoracic vertebra to the base of the cranium when it ends in a free hanging depending end that forms a zone of unbroken neurological protection to the back of the neck as shown in figures 2 and 3, Further, Further, straps/rigid substrate shield (23) extend from the first substrate having closure/securing means and around a ventral region of the neck as shown in figures 1 and 2. Further, the first substrate defines an arcuate outer shell with a cushioning substrate, col. 4, lines 27-30.

With regard to claim 8, it is inherent that the straps are radio-translucent.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartunian in view of Douglas (US 5,483,698). Hartunian discloses the invention as set forth above except for showing the device with recess having removable heat/cold packs.

Douglas discloses a device to protect the neck and the base of the skull while allowing unimpeded motion of the head from either side to side or front to front adapted to be worn with a helmet. Also, a removable pad/second cushioning substrate (32, 34) being inserted into a recess of the device, col. 4, lines 36-38.

It would have been obvious to one skilled in the art at the time the invention was made to form the device of Hartunian so that the second cushioning substrate is removable as taught by Douglas so that worn or damaged pads can be easily replaced. Further, the device of Hartunian when viewed with Douglas can have removable hot/heat packs within the recess in order to comfort the neck from muscle strain or as required for a particular application thereof.

9. Claims 16, 18-20, 22-23, 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartunian (US 6,058,517) in view of Douglas (US 5,483,698). Hartunian

discloses the invention as set forth in paragraph 6 above except for showing the device having removable heat/cold packs within the recess having means for positioning.

Douglas discloses a device to protect the neck and the base of the skull while allowing unimpeded motion of the head from either side to side or front to front adapted to be worn with a helmet. Also, a removable pad/cushioning substrate (32) being inserted into the device and integrally molded to the first substrate, col. 4, lines 36-38. Further, means for positioning the removable pads includes fasteners, 26, 28, 30, 44 and 46, col. 4, lines 46-50. In addition, the first substrate (12) is more rigid than the second cushioning substrate, col. 3, lines 3-50 and col. 4, lines 14-24.

It would have been obvious to one skilled in the art at the time the invention was made to form the device of Hartunian so that the second cushioning substrate is removable as taught by Douglas so that worn or damaged pads can be easily replaced. Further, the device of Hartunian when viewed with Douglas can have removable hot/heat packs within the recess in order to comfort the neck from muscle strain being adjustable to different sized helmets or as required for a particular application thereof.

10. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartunian in view of Hujar et al (US 5,557,807). Hartunian discloses the invention as set forth above except for showing means of attaching the neck device to a helmet.

Hujar et al (hereinafter Hujar) discloses a helmet with cooling means having a neck protector that is integrally molded thereto as shown in figure 3.

It would have been obvious to one skilled in the art at the time the invention was made to position the neck device of Hartunian which is reversibly worn on the head as shown in figure 4 by attaching the device to a helmet as taught by Hujar, an alternative but equivalent means of securing the device about the head in order to keep the user comfortable or depending on the end user thereof.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The examiner's supervisor Mr. Gary Welch can be reached at (571) 272-4996. The group fax number is (571) 273-8300.

November 16, 2007



**TEJASH PATEL  
PRIMARY EXAMINER**